



North & South Essex Local Medical Committees Limited
in association with Healthskills



Winning Tenders

Winning Tenders - A Practical Guide

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How Have Things Changed?

Context

The NHS is currently in the throes of another major reconfiguration. This reconfiguration is, however, different from previous changes because of the sheer scale and scope of the revolution underway. A clear market in healthcare is being set up, with commissioning of services being separated even more from the provision of service. There is far less concern about the source of provision of care, and an overwhelming emphasis on patients receiving prompt high quality care, whether this is provided directly by the NHS or not. With the reduction in direct NHS provision, the very letters NHS are coming more and more to mean National Health System rather than National Health Service.

Major drivers for change have included:

- The 10-year NHS Plan 1997
- The NHS Improvement Plan 2000 - Ten years of reform
- Shifting the Balance of Power 2001
- The two Wanless reports
- The best way of funding healthcare
- The “fully engaged” public health scenario - “Our Health, Our Care, Our Say”
- A government belief in flexible markets and ‘Choice’

The key themes within all of these reports and public debates have been:

- The efficiency with which services operate
- The emphasis on outcomes
- New roles and new ways of working by health staff
- Quality of service, not number crunching
- Patient and Public Involvement
- Increased accountability
- Plurality of provider - private partnerships
- Patient Choice

In this new environment, there is a requirement for services to prove they are fulfilling all these themes. Contestability means that practices can no longer rely on historic patient flows for their future income. PCTs and Practice Based Commissioning (PbC) clusters are commissioning services using these principles, while PCTs are contracting using them.

For GP practices to prosper in the new healthcare market they will need to:

- Become more outward looking in their planning for future services
- Seek to quickly engage with new opportunities as they appear
- Adapt their ways of working to meet the changing needs and expectations of the public and PCTs
- Develop enhanced skills in planning, marketing and finance that they may not previously have had the organisational capacity to fulfil.

Both patients and health workers are likely to see significant changes.

What changes will patients see?

- National standards
- Inspection
- Independent providers
- NHS Foundation Trusts
- Flexible workforce
- An end to waiting
- Choosing Health
- New GMS contract
- New pharmacy, optometrist, dental contracts
- Choose and Book - 'Fair for all, personal to you'
- Payment by results - National tariffs
- Plurality and diversity of provision
- Practice based Commissioning

Who Else Is Involved?

PCT Contracts

PCTs can contract for additional services with a full range of bodies:

- Commercial organisations, such as sole-traders, partnerships, limited companies and public limited companies
- Voluntary / Charitable organisations, such as those regulated by the Charities Commission.
- Mutual providers, social enterprises and community interest companies
- Public Bodies, such as those which come under the umbrella of the NHS, or social services, education or criminal justice.
- GMS & PMS practices through a separate contract

There are significant opportunities to create new organisations to take on contracts with PCTs. Creation of special purpose organisations, such as limited companies or social enterprises such as community interest companies is one option for significant consideration.

Competitors

Here is what one private sector provider of health services is currently saying to PCTs around the country in its promotional materials:

“With a specialist team of experienced professionals assigned to the new APMS initiative, (Private Provider) is happy to exchange ideas and explore options with PCTs. We have a pipeline of doctors at PCTs’ disposal and are adept at using the skills of advanced nurse practitioners, special interest GPs, pharmacists and healthcare assistants to provide a multi-practitioner approach to developing our services. We are experienced in designing and building new healthcare facilities. We can offer diagnostics; emergency avoidance schemes; intermediate care; rehab services; long-term conditions management; and, of course, out-of-hours and in-hours primary care.”

“The strengths that (Private Provider) can demonstrate speak volumes about how we aim to fulfil APMS contracts:

- We pride ourselves on the closeness, quality and longevity of the relationships we build up with partner organisations
- Our key focus is finding - and delivering - solutions to wide-ranging problems, as demonstrated in our contracts to build and run ISTCs
- We have an excellent reputation for service provision - and for delivering on budget and on time”

It is vital that GP practices understand the types of competitor they will be tendering alongside.

What Do We Need To Consider?

What is a tender?

There is a range of definitions of the word tender, which depend upon whether you take a legal, commercial or common usage perspective. In simple terms, a tender is ‘an offer to do work’ issued by one party to one or more others. It is the organisational equivalent of a job advert and the tender documentation is the equivalent of the job application form.

Considerations for Contracts

Submitting tenders is an exceptionally common process for nearly all commercial organisations supplying goods or services from business to business or to the public sector.

The use of formal tenders often applies to larger jobs or for contracts to supply services over a long period over time. Because of the need for transparency and openness and to avoid corruption and malpractice, public-sector work in particular has specific tendering processes.

Whether you are successful in obtaining the contract or not, writing a tender can help significantly to clarify your aims, strengths and weaknesses and your organisation can learn and become stronger for next time by asking for feedback on your bid. Undertaking a tender process can significantly raise your profile with the PCT and may help you learn about their needs.

Entering into a legally binding contract is not to be undertaken lightly and there are many significant considerations before signing. These include:

- The exact service to be provided
- The length of contract
- Performance monitoring, quality control and governance arrangements
- Payment schedules and pricing structures
- Employment issues, including pensions
- Provision of premises and equipment
- Provision of information
- Warranties

The complexity of the requirements of major statutory bodies such as PCTs must not be underestimated and neither should the time it will take to meet their requirements, nor the skills needed within your team.

Warranties are crucial within contracting for services. Warranties are legal undertakings or guarantees. You will be expected to give at least a limited warranty in relation to your capacity to enter into the contract. The alternative is a fuller warranty of all information provided prior to the signature of the contract. This might take the form of “... has used reasonable endeavours to ensure that the information is accurate.”

It is vital that the exact service to be provided is exactly specified, as this is the most frequent cause of debate, disagreement and lack of renewal of contracts.

In order to agree a contract you need to identify the service others will need from you. Asking these questions can do this: **Who? What? Where? When? How?** Specify your service exactly:

- Exact service provided
- Limitations to the service provided
- Time of service availability

In addition, asking the following is necessary: **How well? How many? How much?**

- Quality of service and how it will be measured
- Level of activity and how it will be measured
- Cost of service and how it will be measured

The Procurement Process

The process of procurement can be lengthy and significant.



What Do They Expect Of Us?

Uncertainty

Do not expect the PCT to have a firm view of the type of contract they will enter into. It is quite possible that PCTs will not need to, or want to, specify the type of the contract at the start of the tendering process. It is quite possible that, depending upon the type of service being tendered, that the same services could be provided under either PMS, GMS or an APMS contract. The choice of contract, therefore, may be determined by the status of the contracting party rather than by the PCT.

As part of the contract, some PCTs will require statements on sustainability, racial equality, diversity and health and safety. These are crucial to your success.

Encouraging Innovation

A PCT/PbC cluster may not have an idea of what the service will look like at the start of the process. It may have identified a particular problem or service need and then be looking for ideas or solutions. This type of approach may be constructive in encouraging more innovative solutions to the problems faced.

What's the Legal Status?

Contracts

The legal basis upon which PCTs will contract for services and which therefore govern the tendering process are: Section 16CC (2)(b) of the NHS Act 1977, plus Directions from the Secretary of State, currently the Alternative Provider Medical Services (no 2) Directions 2004 as well as Provisions from the National Health Service (Personal Medical Services Contracts) Regulations 2004.

Will the Process Be Fair?

All contracts issued by public bodies in the UK are meant to abide by principles of transparency and fairness in the tendering process. There is an EU Procurement Directive that applies, however, the only formal requirement within that is to publish a contract award notice following the award of the contract. Even this does not apply for small contracts, where the value of the contract does not exceed (in 2005/06) £129,462. There will be as many different processes for tendering for provision of services as there are tenders and not all of them will be fair. The EU Treaty was signed to remove discrimination against firms from different member states tendering for contracts. Almost all public procurement contracts must be published in the daily supplement to the Official Journal of the European Union (OJEU).

Conflicts Of Interest

Conflicts of interest are particularly likely if:

- There is potential for the services to be provided directly by the PCT rather than the parties tendering.
- GPs in the PCT area are potential bidders for the services, given their potential influence on the PCT.
- GPs could potentially lose their enhanced services to the proposed scheme.

All parties within the tendering process must disclose all potential conflicts of interest at the outset. There is significant scope for legal challenge of the process and awarding of contracts if there is evidence of a potential conflict of interest, whether it was real conflict of interest or not. The purpose of ensuring transparency and openness is to ensure that all decisions are taken in the best interests of the patient and the public sector and not primarily in the interests of employees or suppliers.

Factors that will influence the fairness of the process include whether the PCT has sufficient tendering experience, whether the PbC cluster has tendering experience and the quality of advice they receive.

Potential Provider Concerns

Organisations which hope to provide services awarded under a tender process often have significant concerns. These include the considerable time taken in repetitive pre-tender vetting of the quality of services provided and vetting of the clinical governance systems and arrangements underpinning the quality of care. There is considerable scope for reducing repetition by commissioning independent reports upon these factors so that all potential contracting bodies could rely upon them as part of their 'due diligence' work.

A further concern is the length of time that the tendering process may take, with endless discussions that progress nowhere. Although PCTs have very few managerial staff, they have considerably more capacity than GP Practices or other provider bodies. The process may prove to be significantly over-bureaucratic.

Creativity and innovation are a key requirement of the outcomes of many PCTs' tendering processes. Providers often feel threatened that their ideas and creative energies will be used to improve another organisation's bid and that there is a risk of losing intellectual capital. This is particularly the case when discussions are put into the public domain and shared with other bidders. A further concern is that lengthy private discussions will result in the announcement of a competitive tender that is equally open to others, but which contains a specification largely generated by you.

Some contracts will also be seen as a 'fix' with only one bidder considered and a 'sham' process undertaken merely to justify the original decision and give the impression of fairness. Another concern is that competitors will enter contracts using 'loss leaders' to gain market penetration with the intention of subsequently raising prices when the extent of competition has been reduced.

Whether the process is fair or not, there will always remain the concern that the whole process is disproportionate to the value of the contract itself, "It took more money to win the contract than it's worth!"

What Sorts Of Tenders Are There?

Types of Procurement Process

The NHS Purchasing And Supply Agency (PASA) has recently worked with the NHS Confederation on a model contract and identified four main models of procurement process:

Model A: Competition against specification

In this case, a precise specification is issued publicly and there is open competition amongst providers based upon the information contained within the specification. In some cases further information will be available informally, however in other cases, all communication will be refused in order to have a strictly fair, if uninformed, process. In many cases the specification will be based upon the process that is required and the service expected will be rigidly laid out. This is often a single-stage exercise and may be used frequently where there is a service the PCT merely wishes to replicate.

Model B: Competition against specification with variant bids encouraged

In this case, an overt part of the process is to encourage problem solving and the presentation of innovative new methods of service provision. In some cases, the specification will be entirely outcomes based, with the presentation of the process to be undertaken to achieve those outcomes being the purpose of the tender bid. This case might be used where the PCT wishes to 'test the market' to see what alternative ideas may be proposed. This might be undertaken to develop alternative approaches to the perceived problem and generate alternative possibilities for new ways of working.

Model C: Competition to act as a partner in developing and providing a service

In this case, a partner is selected at an early stage in the process so that the partner has confidence in dealing with the long and possibly bureaucratic process of developing a new service model. The concerns of loss of intellectual capital are directly addressed by awarding the contract before the bidder has undertaken significant work.

Model D: Responding to a direct approach

In this case, there is no advertisement and no competition, merely the direct offer of work under a contract specification.

Any of these four approaches may be used by PCTs. It is essential to identify which type of process you may be involved in at the outset.

Tender Applications

Selection criteria and the parameters of the tender document should be clearly stated in the procurement pack. Specifically, contact details and the mechanisms for getting further information should be stated.

Other sources of information may include:

- Freedom of Information Act
- Annual report and accounts
- Public Health report
- Local Authority information

Never underestimate the value of local knowledge.

What Comes Before Form Filling?

Engaging in the Process

Completing tender documentation is not about filling in the boxes with words the PCT wants to read. It is about proving you have undertaken all the essential preparatory work to ensure successful implementation. The documentation is the final evidence of that process. Proving you have the experience

What Sort of Organisation Are We?

Your Competitive Strategy

- Cost Leadership
 - Cost Leadership involves being the single recognised lowest cost service provider within your area of operation. This involves using the most efficient ways of working and harnessing new technologies. Are you a large generalist provider of services to a large population with great economies of scale and low overheads?
- Differentiation
 - Differentiation involves being different from all other services by offering something which is unique in your area. Do you differentiate yourself by being committed to being a holistic practice, stressing ill-health prevention or by use of alternative or complimentary therapies?
- Focus
 - Concentrating in a limited field of activity. Do you just 'stick to the knitting'?

Once you've decided to submit a tender, you will need to decide how you will manage the bid:

- Who will gather the information and undertake the necessary research?
- Who will co-ordinate all the material you will need?
- Who will be responsible for writing the draft?
- Who will check the tender?
- How will the rest of your practice work get done?

You need to identify responsibilities at the outset to avoid delay and confusion later in the process.

What Are Our Capabilities?

Before entering into a protracted, complex, time-consuming and distracting process, it is essential for you to ask yourself: "Are we up to it?"

Initial questions you may need to ask of your organisation include:

- What are the gaps in our skills and knowledge of planning and tendering?
- What additional help will we require during the tender process?
- What analytical and planning techniques are required?
- Who will have to be involved?
- Do we have the organisational capability?
- Will we still be able to do the rest of our jobs?

Your Capability Profile

Is your current organisation capable of winning, sustaining and retaining the contract? What are your capabilities? It could be worse for you to get the contract than to not be awarded it - and worse for patients. Is your current organisation fit for its current purpose? The Capability Profile is often the first section of an application / tender document and can be divided into the following sections:

- Resources available
- Services provided
- Systems used
- Organisation structure
- Quality of outcomes
- Financial returns
- Proven track record

Organisation

A tender succeeds, not on the basis of the words in your tender document, but in the belief of the contract awarder that you have the capability to carry out what you say you can. In order to get this assurance, you must assess the capabilities of your current organisation and, if necessary, make changes, before the PCT identifies significant weaknesses in your capabilities. A capability profile looks at:

- Current facilities
- Bottlenecks in patient processes
- Analysis of staffing
 - Qualities
 - Skills
 - Adaptation to change
- Analysis of financial performance

Expectations

- Employees
 - Job satisfaction
 - Pay
 - Working arrangements
- Patients
 - Quality
 - Access
- National and local Associations
- Purchasers

It is vital that you assess how the contract would affect your other work, staff and your ability to take on other work in the future. Is the current political climate one in which you must be seen to tender?

What does the PCT Want?

Using Marketing in the NHS

Marketing in commercial organisations is about identifying and satisfying customer need. It is essential that you focus on the PCT and their needs and expectations of the result of the process. Your focus should be on their needs and how you can solve their problems. When you write about your organisation, it is to prove you have the skills, experience and organisation to fulfil the PCT's requirements.

If the PCT has provided a pre-qualification document, make sure that you cover point-by-point everything in the document

The final document will be a coherent and objective read that:

- Responds to patient need
- Responds to Ministers' needs
- Responds to targets
- Responds to White Papers
- Demonstrates value for money
- Shows innovation
- Ticks some boxes!

It is important to focus on benefits and not upon features within your tender. Features are the aspects of your service of which you are most proud. They are unique and are what sets you aside from other providers. What the PCT is interested in, however, is the benefits - the ways in which their objectives will be met and the gains to them from your services.

How Do We Write The Tender?

Putting it on Paper

When it comes to filling in the tender documentation issued, or writing the bid, it is vital that you follow some simple rules to increase the likelihood of success in the process.

Firstly, read the tender. A tender is an organisational job application and within it are clues to its successful completion. The purpose of the tender is to allow you to identify firstly, whether your organisation wants the work and secondly, how suited your organisation is to carrying out the work. Identifying the level of 'fit' between the organisation capabilities and the requirements within the tender is the process of tender evaluation.

Everything submitted should be:

- Clear - sentences should be short and punchy.
- Concise - the written submission should be as brief as is possible without losing the essential message and meaning behind the document. Those assessing tenders will prefer a shorter, more concise read. Use bullet points and headings to break up monotonous blocks of text.
- Standardised - all elements should be presented in a standard format, with all CVs presented in the same way.
- Accurate - given the fact that legal undertakings such as warranties will be requested, it is essential that everything within the tender is accurate and not partial or misleading in any way.
- Factual - any statement of opinion should be removed and replaced with factual evidence. If you have no evidence to support any statement within the document, it should be removed.
- Evidence based - there should be clear references.
- Business-like - every aspect of the tender submission should be as professional as the services you hope to provide.
- Specific to the audience- it is vital that you ask yourself "Who is the audience and what are their needs?" at every stage of the preparation, writing, editing and submission of the documentation.
- With impact - after even a brief look at your submission, the tender evaluation team should know exactly who you are and what you stand for.

Do

- Keep your purpose in mind
- Plan the tender documentation beforehand
- Be brief without being abrupt
- Use simple language
- Use short sentences
- Be positive
- Set aside sufficient time

Don't

- Ramble
- Use irrelevant jargon
- Forget to check details
- Make promises you can't keep
- Oversell yourself

You should take care to summarise your bid and identify why it answers the PCT's needs. This should be written last but put at the beginning of your tender.

PCTs will expect you to:

- State the purpose of the bid.
- Summarise your previous work, past experience and ability to undertake this tender.
- Explain how you will carry out the work, and how the PCT's aims will be achieved.
- Explain the benefits and value-for-money of your bid.
- Detail when and how the services are to be delivered, and provide a timetable.
- Show CVs, organisation structures and evidence of similar previous work. You should demonstrate your team's skills, experience of similar work and their responsibilities if you win the contract.
- Explain how you will practically manage the work over the course of the tender period.
- Give details of your price within the document.
- Be practical and not promise what it is clearly impossible for you to deliver.

The Freedom Of Information Act may be a significant help in gaining information that can assist you in completing the tender. However, information from your tender may be disclosed in the future under the Freedom of Information Act (in force from January 2005). This gives anyone, including your competitors, the general right to see information held by public authorities, including PCTs, including the information in your tender. It is therefore vital that you clearly indicate which information is "commercial in confidence". If the information you provide is particularly sensitive, you might wish to ask for a specific non-disclosure agreement to be part of any negotiations with the PCT.

What About the Money?

Value For Money

The majority of tenders are not decided upon on the basis of financial cost alone. It is the relative value for money which each tender offers that is usually most important.

Pricing of Services

There are three methods of deciding upon the price of a service.

- Cost plus
 - This method of pricing calculates the total cost of providing the service and then adds (the plus bit) a percentage for the return to the organisation.
- Ability to bear
 - This method estimates the maximum price that the customer will be willing to pay - the most it will bear without deciding not to purchase - and then charges it.
- Target price
 - This method looks at the price of the service as fixed and given by the customer and the service is designed with this in mind to ensure that costs do not exceed it.

There may be indications within the tender of which is the preferred method of pricing for the service.

If the cost plus basis were used, the following would have to be included:

- Basic pay
- Allowances and enhancements
- National Insurance and pension contributions
- Additions for long-term sickness and maternity leave
- Uniforms, vehicles, mobile phones etc
- Equipment, materials, premises costs...
- Management and administration
- Costs of gathering data, analysing it and reporting upon performance.

Analyse all the costs of undertaking the work, ensuring you include those costs that are being incurred that could be used to work on something else - the economic opportunity costs.

How Do We Get Paid?

Payment Mechanism

There are many potential mechanisms for determining the amount that is payable under the contract. Method include:

- Fixed price - a fixed price is payable and guaranteed unless there is a breach of the contract.
- Performance-related - payment varies according to a pre-determined performance assessment upon known criteria.
- Volume-related - payment varies based upon the number of items of patient activity counted, according to pre-determined rules.
- Incentives - a fixed low price with inbuilt incentives for reaching pre-determined goals to encourage high-quality performance

It is quite within the rights of a tendering organisation to ask for access to financial information, or an 'open-book' accounting system, where all expenditure incurred on the project can be reviewed and inspected by the organisation.

Price variation mechanism for changes to services

Where Do I Find Out More?

Further Information

NHS PASA has issued a procurement pack and contract commentary on the NHS PASA website: www.pasa.nhs.uk

Healthskills: www.healthskills.co.uk

North & South Essex LMCS Limited: www.essexlmc.org.uk

Bids, Tenders & Proposals by Harold Lewis (Kogan Page)

Tendering for Public Contracts A Guide For Small Businesses, Fourth Edition, available from Department for Business, Enterprise and Regulatory Reform website: <http://www.berr.gov.uk/files/file39469.pdf>



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